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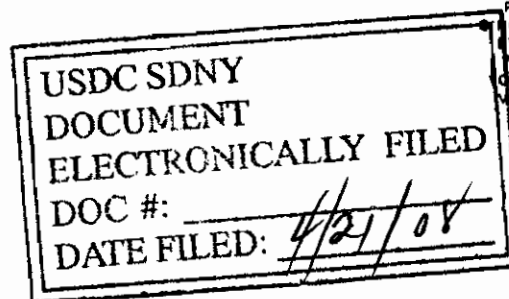
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April 17, 2008

**BY FACSIMILE**

Hon. Loretta A. Preska  
United States District Judge  
United States District Court  
for the Southern District of New York  
500 Pearl Street, Room 1320  
New York, New York 10007



Re: Burton v. Merrill Lynch & Co., Inc. and Merrill Lynch,  
Pierce, Fenner & Smith Inc., 08 CV 3037 (LAP)

Dear Judge Preska:

We represent Merrill Lynch & Co., Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated (together "Merrill Lynch") in the above-referenced action. We write in response to Mr. Girard's letter of yesterday requesting a conference in connection with the Court's April 2 memorandum and advising that Mr. Burton does not "waive recusal under Section 455(a)."

Merrill Lynch respectfully submits that recusal under 28 U.S.C. § 455(a) is unwarranted. See *In re Digital Music Antitrust Litig.*, No. 06 MDL 1780 (LAP), 2007 U.S. Dist. LEXIS 13567 at \*40-42 (S.D.N.Y. Feb. 27, 2007). We are available to address this issue in detail should the Court desire to schedule a conference.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jay B. Kasner".

Jay B. Kasner

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cc: Daniel C. Girard, Esq.  
Stephen Weiss, Esq.  
Norman Siegel, Esq.  
Eduard Korsinsky, Esq.  
Stephen B. Saxl, Esq.  
(Via Facsimile)